

## Case Snippets

### Volume 03, Number 11 (March 11, 2020)

#### Bimalkumar Manubhai Savalia Vs. Bank of India and others. (5th March, 2020) (NCLAT)

(Article 137 of Limitation Act, Section 18 & 19 of the The Limitation Act, 1963,  
Section 7, section 238 of Insolvency and Bankruptcy Code, 2016)

In the present appeal Corporate Debtor challenge the order of NCLT passed on dated 20-09-2019.

The Adjudicating Authority admitted the Application filed by the Respondent No. 1 herein in the capacity as Financial Creditor under Section 7 of Insolvency and Bankruptcy Code, 2016 on the ground that the Corporate Debtor defaulted in payment of debt/loan facility availed by the Corporate Debtor.

The main ground taken by the Appellant in the present appeal was with regard to the Application filed by 1st Respondent under Section 7 of IBC is time barred.

The grounds raised by the Counsel for respondent were that the date of default, as mentioned in statutory form -1, shown as 5-11-2014. However, the Application was filed before the Adjudicating Authority on 30.08.2018 is within limitation period for the reason that the Corporate Debtor issued a letter dated 28.04.2016 and the second letter on 01.06.2016 with regard to the settlement. It was further argued that the letter dated 28.04.2016 was issued 'without prejudice'. However, in the second letter the word 'without prejudice' was not used and therefore the letter dated 01.06.2016 can be treated as an acknowledgement of debt by the Corporate Debtor.

Further the Guarantor paid the amount of Rs. 1,26,619/- and Rs. 1,28,645/- by transferring the same to the account of the Corporate Debtor on 01.04.2017 in accordance with paragraph-6 of the Deed of Guarantee dated 15.07.2010 through the Corporate Debtor. In view of the Deed of Guarantee, executed by the Guarantor on behalf of the Corporate Debtor, the transfer of amount can be treated as an acknowledgement for the purposes of limitation.



With regard to the limitation, the Adjudicating Authority observed that the date of mortgage was 18.11.2010, The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short 'SARFAESI') and Debt Recovery Tribunal (in short 'DRT') started in 2017, One Time Settle (in short OTS) revised offer from 12 Crores to 14.56 Cores, vide letter dated 01.06.2016 was submitted by the Corporate Debtor to the Financial Creditor-Bank and the credits have come to the loan account on 31.03.2017. The Adjudicating Authority, by observing above, held that the Application is within limitation taking into account the OTS proposal dated 01.06.2016 and the amounts which have come from the Guarantor into the loan account of the Financial Creditor on 31.03.2017

NCLAT specifically mentioned that the SARFAESI and DRT proceeding will not extent the period of limitation since those proceedings are independent and as per section 238 of IBC, the Insolvency and Bankruptcy Code is a complete Code and will have overriding effect on other laws. Therefore, the proceedings initiated or pending in DRT, either initiated under SARFAESI or under debts and due to Banks and Financial Institutions cannot be taken into account for the purposes of limitation.

NCLAT made reference to Hon'ble Supreme Court's judgement in the case of B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta & Associates" and held that there is no acknowledgment issued by Appellant/Corporate Debtor prior to expiry of 3 years or from the date of default. Therefore, the Application filed by the 1st Respondent before the Adjudicating Authority on 30.08.2018 is beyond the period of limitation.

The Appeal was allowed and the Impugned Order passed by the Adjudicating Authority dated 20.09.2019 was quashed and set aside.

